

On August 8, 1999 the employee, a 66-year-old physician working as a diagnostic radiologist, filed a Form CA-2 claim for benefits, alleging that his non-Hodgkin's lymphoma condition was caused by radiation exposure during his 10-year employment. He stated that he

first became aware of his condition on May 25, 1999. On December 1, 2000 the employee passed away as a result of the non-Hodgkin's lymphoma. On June 4, 2001 the employee's widow filed a Form CA-5 claim for death benefits.

In several statements, the employee indicated that he was exposed to a very small amount of radiation in his residency and private practice and was exposed to a large amount of fluoroscopy for the employing establishment. He stated that he wore a lead apron for protection which covered his chest and abdomen, below the level of his neck and wore lead goggles to protect his eyes, but that there was no equipment for protection of his neck, face and head regions. He advised that his right neck and supraclavicular areas were the areas of maximum non-Hodgkin's lymphoma nodal size and involvement.

Several reports from appellant's physicians were submitted. In a June 29, 1999 report, Dr. David F. Scales a neurologist, noted that he had examined the employee on April 13 and May 25, 1999 and discovered tender lymph nodes in the employee's neck, more so on the right than the left side, which turned out to represent a malignant form of lymphoma. He stated that the employee had received large amounts of radiation, predominately to the right side of his neck, because of his orientation to the fluoroscopic tube while other sides of his body had been adequately shielded by a lead apron. Based on his experience as a neurologist and his background in physics, which included extensive studies of electromagnetic radiation and its effect on biological tissues, Dr. Scales opined that the employee's lymphoma was caused by his frequent and fairly long-term exposure to radiation as a radiologist.

In a July 16, 1999 report, Dr. Anthony A. Mancuso, a Board-certified diagnostic radiologist, stated that he reviewed the employee's radiation exposure history and was involved in the diagnosis of his lymphoma. He opined that it was medically reasonable to assume that the radiation exposure the employee received in the course of his employment resulted in the lymphoma.

In an August 3, 1999 report, Dr. Nancy P. Mendenhall, a Board-certified therapeutic radiologist, advised that she was treating the employee for mantle cell lymphoma. She noted that there was a very high incidence of leukemia and lymphomas in health care workers who were involved with radiation and stated that it was commonly recognized that their exposure to radiation, either from radon gas or fluoroscopy, was an important etiologic agent. Dr. Mendenhall opined that the employee also developed an illness that was in all probability related to his radiation exposure as a diagnostic radiologist, in particular his work with fluoroscopy.

In an August 30, 1999 report, Dr. James W. Lynch, Jr., a Board-certified internist, advised that the employee was diagnosed with mantle cell lymphoma. He noted the employee's work record and exposure to radiation, noting that during the last 10 years, the employee wore an apron during all of his procedures, but that his neck was exposed to chronic, small doses of radiation, which was an inherent risk of the practice of fluoroscopic radiology. Dr. Lynch opined that the fact that the employee's lymphoma, a known common complication of exposure to radiation occurred in the neck area as its primary presentation, was consistent that there was a cause and effect with the chronic radiation exposure and the development of lymphoma.

In a September 8, 1999 report, Dr. John R. Wingard, a Board-certified internist specializing in medical oncology, advised that the employee was recently diagnosed with an aggressive type of non-Hodgkin's lymphoma. He noted that the employee had worked as a radiologist performing frequent fluoroscopy between 1989 and 1999 and wore protective garments during that time. He noted that such garments did not provide full protection of the neck and head regions and advised that the lymphoma was present in the neck area and in areas which were not shielded from radiation exposure. Accordingly, given the sites of origin of the employee's lymphoma, Dr. Wingard opined that the radiation exposure during the course of the employee's work as a radiologist likely contributed to the causation of his lymphoma. He further stated that the timing of the employee's exposure and the onset of lymphoma were entirely consistent with the causation.

In a September 16, 1999 report, Dr. Scott P. Stringer, an otolaryngologist, advised that based on his review of the employee's medical record and occupational exposure, his opinion was that the employee's development of non-Hodgkin's lymphoma was related to his occupational radiation exposure.

In an October 27, 1999 report, Dr. Jan S. Moreb, a Board-certified internist specializing in medical oncology, advised that the employee was diagnosed with aggressive non-Hodgkin's lymphoma. She noted that the employee worked as a radiologist performing frequent fluoroscopies between 1989 and 1999 during which he wore protective garments. She further noted that the employee's neck and head regions were not protected and because his lymphoma presented in the neck area, the radiation exposure was likely a major contributor to the development of his lymphoma. She stated that her conclusion was based mainly on the timing of his exposure and the onset of lymphoma, which was entirely consistent with radiation exposure as a cause. In addition, there was medical literature which reported on the high incidence of leukemia and lymphoma in health care workers who have been involved in radiation, which the employee had.

The Office attempted to refer the employee to a second opinion physician for an evaluation, but, because of the employee's disabling condition, was unable to do so. Accordingly, the Office sent the employee's case record, together with a statement of accepted facts and a list of questions, to Dr. Ross A. Abrams, a radiation oncologist, for a second opinion. The statement of accepted facts noted that the employee was exposed to a very small amount of radiation during residency training and private practice from 1966 to 1979 and from 1989 to 1999 was exposed to a total dose of 950 millirem from the employing establishment. The statement further provided that the employee used lead aprons and was protected by lead goggles, neck and face shields as a personal protection device.

In a report dated July 11, 2000, Dr. Abrams opined that the employee's lymphoma was not caused by radiation exposure. He estimated the likelihood of causal relation would be four chances in 1,000,000 in any given year due to: the natural exposure that all human beings receive on an annual basis was probably several fold greater than the occupational exposure the employee received as a radiologist; there was an increasing incidence of lymphoma of non-Hodgkin's lymphoma of all types, particularly in elderly men, the category into which the employee would be considered; lymphoma occurrence after occupational exposure was extremely rare; and there was no longer felt to be an increased risk of leukemia or other

hematologic malignancies occurring in radiologists. Dr. Abrams further stated that given the lag time which was generally associated with the development of malignancy, even hematologic malignancy after exposure to irradiation, if he were to assume that the employee's lymphoma was related to irradiation exposure, it would be more logical to conclude that it was due to radiation exposure which occurred more than nine years prior.

By decision dated January 23, 2002, the Office denied appellant's claim for death benefits on the grounds that the factual and medical evidence were insufficient to establish a causal relationship between the employee's medical condition and resultant death with factors of federal employment. The weight of the medical opinion evidence was given to the opinion of Dr. Abrams, the second opinion physician.

On February 19, 2002 appellant requested an oral hearing, which was held October 29, 2002. In a December 11, 2000 deposition, Dr. Lynch noted that he saw the employee subsequent to his diagnosis of mantle cell lymphoma and was aware that he was a radiologist frequently involved in fluoroscopy with no neck shield being used. Dr. Lynch described how the cells behaved in a malignant fashion once radiation damaged the deoxyribonucleic acid of the cells. He further indicated that when there was no shield to absorb the radiation, the radiation came directly into the body. He stated that when a cancer develops on an unprotected part of the body, that was a factor to determine whether or not it was related to the exposure alleged. Dr. Lynch stated that the employee had involvement in the arms and neck area, but no involvement with lymphoma in his cheeks or abdomen. Dr. Lynch further stated that because the employee's tumors presented in the areas which were exposed, it had to be considered a radiation-induced malignancy. He noted that there was a question as to whether non-Hodgkin's lymphoma could be related to certain pesticides.

By decision dated January 27, 2003, an Office hearing representative set aside the Office's January 23, 2002 decision and remanded the claim to the Office for further development. The Office hearing representative directed that the Office should revise the Statement of Accepted Facts to eliminate the reference to neck and face protection. The Office was further requested to refer the case file back to Dr. Abrams or to another physician, if Dr. Abrams was not available, to obtain another rationalized medical opinion with regard to the cause of the employee's diagnosed condition and to issue a *de novo* decision.

Following the remand instruction, the Office issued a revised Statement of Accepted Facts, which did not mention neck and face protection and referred the case record to Dr. Abrams. In a report dated August 2, 2004, Dr. Abrams reviewed the additional information and advised that his opinion was unchanged from his previous letter of July 2000. He further stated that additional research of the literature from 2000 to 2004 did not support appellant's claim and that several publications seemed to undermine appellant's claim of causal relation. Several copies of abstracts and publications were provided.

By decision dated August 9, 2004, the Office denied appellant's death claim. In an attached memorandum decision dated August 6, 2004, the Office accorded determinative weight to the opinions of Dr. Abrams.

### **LEGAL PRECEDENT**

A claimant has the burden of proving by the weight of the reliable, probative and substantial evidence that the employee's death was causally related to his federal employment. This burden includes the necessity of furnishing medical opinion evidence, based on a complete factual and medical background, showing causal relationship.<sup>1</sup>

Section 8123(a) of the Federal Employees' Compensation Act provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician, who shall make an examination.<sup>2</sup>

### **ANALYSIS**

The Board finds that this case is not in posture for a decision. Dr. Abrams, the Office's second opinion physician, found that it was extremely unlikely that the employee's lymphoma was caused by radiation exposure and estimated the likelihood of 4 chances in 1,000,000 in any given year. In a report of July 2000, Dr. Abrams cited various factors as to why it was unlikely that the employee's lymphoma was caused by radiation exposure. He further advised that if he were to conclude that this lymphoma were related to irradiation exposure, it would be more logical to conclude that it was due to radiation exposure occurring more than nine years prior given the time lag generally associated with the development of malignancy. Following the issuance of an amended statement of accepted facts, Dr. Abrams stated that his opinion was unchanged and that the literature from 2000 to 2004 did not support, but seemed to undermine, the claim of causal relationship.

The employee's treating physicians, however, opined that the employee's lymphoma was causally related to his fluoroscopy work as the origin of the lymphoma was in an area not shielded from radiation exposure, the timing of the employee's exposure and the onset of the lymphoma. Dr. Moreb stated that there was ample literature addressing the high incidence of leukemia and lymphoma in health care workers, who had been involved in radiation like the employee.

The Board finds therefore that there is a conflict in the medical opinion evidence regarding the cause of the employee's lymphoma and death. Dr. Moreb and Dr. Lynch disagreed with Dr. Abrams as to whether the employee's lymphoma and subsequent death were causally related to his fluoroscopy work. The case will be remanded for the Office to refer the employee's case file to an impartial medical specialist to resolve the conflict in evidence.<sup>3</sup>

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<sup>1</sup> *Luis E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002); *Kathy Marshall (James Marshall)*, 45 ECAB 827, 832 (1994).

<sup>2</sup> 5 U.S.C. § 8123(a).

<sup>3</sup> *Id.*

### **CONCLUSION**

The Board finds that this case is not in posture for decision. The Office should refer the medical file to an appropriate Board-certified physician to obtain a detailed, well-rationalized opinion regarding whether the employee's lymphoma and subsequent death were causally related to his fluoroscopy work. Following this and any other development that the Office deems necessary for a proper adjudication of the case, the Office shall issue an appropriate decision.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated August 9, 2004 is vacated and this case is remanded for further consideration consistent with this opinion.

Issued: July 1, 2005  
Washington, DC

Colleen Duffy Kiko  
Member

David S. Gerson  
Alternate Member

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